

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 524  
DATE COMPLAINT FILED: 08/12/11  
DATE OF NOTIFICATION: 08/25/11  
DATE ACTIVATED: 03/19/12

EXPIRATION OF SOL: 01/15/15-01/24/16

SOURCE: *Sua Sponte* Submission by Official 12th Dist.  
Dem Party

RESPONDENTS: Official 12th Dist Dem Party and James Jackson,  
in his official capacity as Treasurer

Debra Doherty

RELEVANT STATUTES: 2 U.S.C. § 432(b)(3)  
2 U.S.C. § 434(a)  
2 U.S.C. § 434(b)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Official 12th Dist Dem Party (the "Committee") filed a *sua sponte* submission ("Submission") disclosing that its former treasurer, Debra Doherty, made six unauthorized withdrawals of Committee funds totaling \$14,500 between January 15, 2010, and January 24, 2011. The Submission also alleges that Doherty failed to disclose in reports filed with the Commission the withdrawals and her subsequent refunds of some of the amounts she withdrew. In addition, as the Committee points out, Doherty failed to file with the Commission the Committee's 2010 Post-General and 2010 Year End reports.

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1 We recommend that the Commission refer the Committee and James Jackson in his  
2 official capacity as Treasurer to the Office of Alternative Dispute Resolution ("ADR"). We  
3 also recommend that the Commission open a MUR as to Doherty, find reason to believe that  
4 Doherty knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 434(a), and 434(b), and  
5 enter into pre-probable cause conciliation.

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Factual Background**

8 On August 12, 2011, the Committee filed the Submission, which alleges that between  
9 January 15, 2010, and January 24, 2011, its former treasurer, Debra Doherty, made six  
10 unauthorized withdrawals of Committee funds totaling \$14,500. Submission at 1. Doherty  
11 issued these Committee checks made payable to cash bearing only her signature, contrary to  
12 the Committee's policy that checks must be signed by two officers. *Id.* During the one-year  
13 course of the scheme, Doherty returned \$4,500 to the Committee's account in separate  
14 personal deposits of \$2,500 and \$2,000. *Id.*

15 The Submission states that Doherty concealed her activity from the Committee and the  
16 Commission by failing to disclose the unauthorized withdrawals and refunds in the  
17 Committee reports she prepared and filed with the Commission. *Id.* Specifically, the  
18 Committee maintains that Doherty added the amounts of her unauthorized withdrawals to the  
19 Committee's actual ending bank account balances in handwritten notes on the Committee's  
20 bank statements. *Id.* at 2.<sup>1</sup> Doherty further attempted to hide her embezzlement by  
21 reconciling the Committee's bank account with the disbursements and cash-on-hand amounts

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<sup>1</sup> Copies of the Committee's bank statements bearing Doherty's apparent marginalia were provided as attachments to the Submission.

1 she reported to the Commission. In addition, the Committee notes that Doherty failed to file  
2 the Committee's 2010 Post- General and Year End reports. *Id.* at 4.

3 According to the Submission, the activity at issue surfaced after the chairman of the  
4 Committee learned that Doherty did not file those two reports. *Id.* at 1. The Committee  
5 promptly removed Doherty from her post as treasurer and conducted an internal audit. *Id.*  
6 After completing its internal audit and investigation, the Committee's attorney informed  
7 Doherty of the Committee's conclusions and sought a full refund from Doherty of the \$10,000  
8 that it determined she had not repaid. *Id.* at 4. On June 30, 2011, Doherty's family made a  
9 \$10,000 payment to the Committee on Doherty's behalf. Doherty Resp. at 3-4; Submission at  
10 4 (attaching copies of money orders used to refund the unauthorized withdrawals).

11 After discovering Doherty's conduct, the Committee amended its reports to disclose  
12 the activity, prepared and filed the two missing reports, elected a new treasurer, and  
13 implemented additional internal controls to guard against future misappropriations and  
14 associated misreporting. Submission at 3.

15 The Committee requests that this matter be addressed according to the Commission's  
16 self-reporting policy and that the Commission refer the Committee to ADR "because the 12th  
17 District voluntarily disclosed the violations, remedied each of them, and took corrective steps  
18 to prevent future similar violations . . . ." *Id.* at 5.

1 According to Doherty, it was during this time of crisis that she was asked to serve as treasurer  
2 of the Committee. *Id.* Doherty states that she  
3 deluded herself to believe that she could "borrow" the Committee funds on a short term  
4 basis to cover her pressing financial needs. Doherty Resp. at 3.

5 Doherty asks the Commission not to pursue enforcement in this matter because of the  
6 "small dollar amount" at issue, namely \$14,500; her full repayment of the misappropriated  
7 funds; the strong likelihood her actions will not be repeated; and the mitigating circumstances  
8 Doherty Resp. at 3.

9 **B. Legal Analysis**

10 **1. The Committee**

11 Pursuant to Section 432(b)(3) of the Federal Election Campaign Act of 1971, as  
12 amended (the "Act"), all funds of a political committee must be segregated from, and may not  
13 be commingled with, the personal funds of any individual. In addition, each treasurer of a  
14 political committee is required to file accurate reports of receipts and disbursements in  
15 accordance with 2 U.S.C. § 434(a) and (b).

16 It is undisputed that the Committee's former treasurer made unauthorized withdrawals  
17 totaling \$14,500 in the form of checks that she alone signed made payable to cash. It is also  
18 undisputed that Doherty failed to disclose the unauthorized withdrawals in reports to the  
19 Commission and failed entirely to file two reports.

20 When determining committee liability in cases of embezzlement, the Commission  
21 often has examined whether the embezzlement resulted in part from the committee's failure to  
22 implement adequate internal controls over its finances (*e.g.*, regular audits, controls

1 procedures over receipts and disbursements, and periodic review of finances).<sup>2</sup> In the 2007  
2 Safe Harbor Policy, the Commission stated that it would not seek a monetary penalty from a  
3 committee for filing inaccurate reports due to embezzlement if the committee had certain  
4 minimal internal controls in place at the time of the embezzlement and the committee took  
5 certain steps after discovering the embezzlement. Safe Harbor for Misreporting Due to  
6 Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("Safe Harbor").<sup>3</sup> The Commission has  
7 concluded that those internal controls and post-discovery steps "represent the *minimum* efforts  
8 a committee must take to qualify for this safe harbor." *Id.* (emphasis added). But the  
9 Commission will consider "the presence of some but not all" of the enumerated controls and  
10 post-discovery activities as mitigating factors in considering the appropriate civil penalty to  
11 assess against a committee that fails to qualify for the protection of the safe harbor. *Id.*

12 The safeguards set out in the policy include: (1) opening all bank accounts in the name  
13 of the committee using its Employer Identification Number; (2) reviewing monthly bank  
14 statements for unauthorized transactions and reconciling the statements by someone other  
15 than the individual with check-signing authority or who has responsibility for the  
16 committee's accounting; (3) dual-signing authority for checks over \$1,000; (4) having in  
17 place procedures for handling incoming receipts by someone other than the individuals with

<sup>2</sup> See, e.g., MUR 5923 (Am. Dream PAC); MUR 5920 (Women's Campaign Fund); MUR 5872 (Jane Hague for Cong.); MUR 5811 (Doggett for U.S. Cong.); MUR 5812 (Ohio State Med. Ass'n PAC); MUR 5813 (Georgia Med. PAC); MUR 5814 (Lamutt for Cong.); MUR 5721 (Lockheed Martin Emp.'s PAC); MUR 5610 (Haywood/Dole).

<sup>3</sup> In addition to the Safe Harbor Policy, the Commission has also provided guidance concerning internal controls "intended to assist committees in protecting their assets and complying with the requirements of the FECA." See Internal Controls for Political Committees, available at [http://www.fec.gov/law/policy/guidance/internal\\_controls\\_polcmtes\\_07.pdf](http://www.fec.gov/law/policy/guidance/internal_controls_polcmtes_07.pdf).

1 accounting or banking authority; and (5) maintaining safeguards for managing a petty cash  
2 account. Further, for cover under the Safe Harbor Policy, when a committee discovers  
3 misappropriation of funds, it must notify the Commission and the relevant law enforcement  
4 authority and promptly amend its disclosure reports to correct errors. *See* Safe Harbor,  
5 72 Fed. Reg. at 16,695.

6 Here, it does not appear that the Committee had in place all of the controls necessary  
7 for shelter under the Commission's Safe Harbor Policy. The Committee states that it had a  
8 pre-existing policy that two officers' signatures were required for each committee check.  
9 Submission at 1. But the Committee does not claim that it required review and  
10 reconciliation of monthly bank statements by a person other than Doherty – the individual  
11 with check-signing authority or responsibility for the Committee's accounting. *See id.* In  
12 fact, the Committee asserts that it instituted "bi-monthly financial reports and review by  
13 other officers" *after* it discovered the embezzlement scheme, suggesting that the safeguard  
14 was not in place before the discovery. *Id.* at 4. In addition, there is no indication that the  
15 Committee had adopted procedures for handling incoming receipts by someone who had  
16 accounting or banking authority, other than Doherty. *See* Submission. Finally, the fact that  
17 Doherty's conduct went undetected for over a year suggests that the Committee did not have  
18 in place the Safe Harbor Policy's minimum controls.

1           The Committee requests referral to ADR. We recommend that the Commission grant  
2     the Committee's request and refer the Committee to ADR. In recent cases involving  
3     committee misreporting resulting from embezzlement, the Commission has either closed the  
4     file as to the committee or referred it to ADR.<sup>5</sup> Here, the new safeguards the Committee  
5     claims it has implemented to prevent future embezzlement appear to lack certain minimum  
6     controls identified in the Safe Harbor Policy. For example, the Committee does not indicate  
7     that it has put in place procedures for handling incoming receipts by someone other than the  
8     individual with accounting or banking authority. Referral to ADR will advance the Act's  
9     goals of giving the Committee incentive to take appropriate steps to educate its staff and

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<sup>5</sup>       See Pre-MUR 526 (Geoff Davis for Congress) (Commission unanimously approving OGC's recommendation to refer committee to ADR for resolution of reporting violations stemming from embezzlement activity and unrelated reporting violations); *see also* MUR 5933 (Indiana Democratic Cong. Victory Comm.) (by a 3 to 3 vote, Commission failed to authorize pre-probable cause conciliation with committee for reporting violations stemming from embezzlement of approximately \$70,000 of committee funds over the course of two years and unanimously decided to refer matter to ADR); Pre-MUR 483 (Christopher Shays for Cong. Comm.) (Commission unanimously voted to refer the committee to ADR for reporting violations stemming from embezzlement of approximately \$150,000 of committee funds over the course of two years); RR 08L-14 (San Antonio Police Officers' Ass'n PAC) (by a 3 to 3 vote, Commission failed to approve OGC recommendations to find reason to believe PAC violated reporting requirements of the Act due to misreporting \$62,400 in embezzlement over the course of two years and unanimously decided to refer PAC to ADR).

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2. Debra Doherty

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It is undisputed that while serving as treasurer of the Committee, Debra Doherty made six unauthorized withdrawals totaling \$14,500 in the form of checks made payable to cash that she alone signed. In doing so, Doherty acted contrary to the Committee's internal policy that required two officers, the chair person and the treasurer, to sign each check. Submission at 2. Further, Doherty's failure to disclose the withdrawals and reimbursements in Commission filings and complete failure to file two reports with the Commission reflect that she attempted to conceal her embezzlement scheme.

16

Under the Act, a treasurer is required to file accurate reports of receipts and disbursements in accordance with 2 U.S.C. §§ 434(a) and (b). Committee treasurers are personally responsible for the timely and complete filing of reports and statements required by the Act and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d). A former treasurer may be named as a respondent in the treasurer's personal capacity when it appears that the former treasurer may have knowingly and willfully violated obligations imposed by the Act or Commission regulations while serving as treasurer.

Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg.



3 (Jan. 3, 2005); *see, e.g.*, MUR 6179 (Christopher Ward); MUR 5610 (Earl Allen Haywood);  
MUR 5772 (Kenneth Phelps); MUR 5971 (Jennifer Adams).

Here, there is no dispute that Doherty violated 2 U.S.C. §§ 434(a) and (b) and  
11 C.F.R. § 104.14(d). By depositing her personal funds into the Committee account to make  
a partial repayment of the stolen funds, Doherty also violated that Act's prohibition against  
commingling committee funds with personal funds at 2 U.S.C. § 432(b)(3). *See* MUR 6179  
(Ward) (Commission found reason to believe that treasurer violated section 432(b)(3) where  
he deposited personal funds into committee accounts).

There is ample reason to believe, moreover, that Doherty's unlawful conduct was  
knowing and willful. *See* 2 U.S.C. § 437g(a)(5)(B). The knowing and willful standard  
requires knowledge that one is violating the law. For conduct to be "knowing and willful,"  
"acts [must have been] committed with full knowledge of all of the relevant facts and a  
recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed.  
May 3, 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02 (D.C. Cir. 1980) (noting  
that a "willful" violation includes "such reckless disregard of the consequences as to be  
equivalent to a knowing, conscious, and deliberate flaunting of the Act"). An inference of  
knowing and willful conduct may be drawn "from the defendant's elaborate scheme for  
disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir.  
1990). The evidence need not show that the defendant "had specific knowledge of the  
regulations" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts  
and circumstances from which the jury reasonably could infer [the defendant] knew her  
conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871  
F.2d 491, 494 (5th Cir. 1989)).

1 Doherty's admitted misconduct supports an inference that it was knowing and willful.  
2 As noted above, Doherty  
3 delude herself to believe she could "borrow" funds on a short term  
4 basis and attributes her behavior to "her incapacity to recognize the gravity and reality  
5 of her decision." Doherty Resp. at 2-3. However, Doherty's efforts to hide her  
6 unauthorized withdrawals by failing to include them in disclosure reports, and the fact that she  
7 kept personal records of the withdrawals in order to reconcile them with the disbursements  
8 and cash-on-hand amounts that she did disclose to the Commission, indicate that she was  
9 aware that her conduct was illegal and was capable of taking a variety of steps designed to  
10 conceal her embezzlement. Accordingly, we recommend that the Commission open a MUR  
11 as to Doherty, find reason to believe that Doherty knowingly and willfully violated 2 U.S.C.  
12 §§ 432(b)(3) and 434(a) and (b), and enter into pre-probable cause conciliation.

Pre-MUR 524 (Official 12th Dist Dem Party)  
First General Counsel's Report

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19 **IV. RECOMMENDATIONS**

- 20 1. Refer Pre-MUR 524 concerning Official 12th Dist Dem Party and James Jackson, in  
21 his official capacity as Treasurer, to the Office of Alternative Dispute Resolution;  
22  
23 2. Open a MUR as to Debra Doherty;  
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Pre-MUR 524 (Official 12th Dist Dem Party)  
First General Counsel's Report

3. Find reason to believe that Debra Doherty knowingly and willfully violated 2 U.S.C. §§ 432(b)(3) and 434(a) and (b);
4. Enter into conciliation with Debra Doherty, prior to a finding of probable cause to believe;
5. Approve the attached Factual and Legal Analysis for Debra Doherty;
6. . . .
7. Approve the appropriate letters.

Date

07/17/12

Anthony Herman  
General Counsel

By:

Daniel A. Petalas  
Associate General Counsel  
for Enforcement

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